


COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY
DIVISION OF WATER QUALITY PROGRAMS
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SUBJECT: Guidance Memo No. 05-2002
Procedure for Terminating Uncontested Permits

TO: Regional Directors, Regional Water Permit managers, Bert Parolari, Joan Crowther,
OWPP Staff

FROM: Ellen Gilinsky, Ph.D., Director 

DATE: February 4, 2005

COPIES: Rick Weeks, Jon Van Soestbergen, Catherine Harold

Summary:

The purpose of this guidance is to establish a revised procedure for terminating VPDES, VPA and VWP permits when the termination is not contested by the permit holder.

Electronic Copy:

An electronic copy of this guidance in PDF format is available for staff internally on DEQNET and for the general public on DEQ's website at: <http://www.deq.virginia.gov>

Contact information:

Please contact Mike Gregory, Office of Water Permit Support, (804) 698-4065 or mbgregory@deq.virginia.gov if you have any questions about this guidance.

Disclaimer:

This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate any particular method nor does it prohibit any particular method for the analysis of data, establishment of a wasteload allocation, or establishment of a permit limit. If alternative proposals are made, such proposals should be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.

Procedure for Terminating Uncontested Permits

Background:

Currently procedures call for all water permit terminations to be presented to and approved directly by the State Water Control Board. The basis for this procedure is State Water Control Law at §62.1-44.14 where revocation of certificates is excluded from delegation by the Board to the Executive Director. Revocation and termination have until now been interpreted as one and the same in this context, however, an uncontested termination due to the ceasing of a discharge or of the operation necessitating the permit, or changing to a different type of permit where the owner has requested termination and waived the right to an informal fact-finding, is not a contested revocation and logically the prohibition of delegation should not apply. For this reason, a revised procedure for terminating permits that are uncontested has been developed as outlined below.

The procedure for termination of contested permits, or permits subject to pending state or federal enforcement action including citizen suits brought under state or federal law, will remain the same and will require direct Board approval. The existing procedures for contested permit terminations are summarized following the procedures for uncontested terminations.

Of the regulations that establish the three water permits of concern, the VPDES Permit Regulation is the most specific with regard to terminations. The procedure outlined below should satisfy the requirements of that regulation as specified in 9 VAC 25-31-410.B, and will also satisfy the requirements of the VPA and VWP regulations. Termination in these cases is by notice to the owner, and is effective 30 days after the notice is sent unless the permittee objects within that time. In accordance with 9 VAC 25-31-410.B, no public notice is required.

For any permit terminations, annual maintenance fees are not required for permits that are terminated prior to April 1 in the year of termination.

Procedure for Uncontested Permit Terminations:

The following procedure will apply to the termination of permits that are uncontested by the permittee and that are necessary because the existing permit is no longer required due to:

- cease of the discharge, operation or activity;
- a change in operations or activity at the site;
- connection of a discharge to a publicly owned or privately owned treatment works;
- a change to a different type of permit (i.e., individual to general, VPDES to VPA, VPA to VPDES);
- determination that compensatory mitigation for unavoidable adverse impacts has been successfully completed.

The procedure is:

1. Termination is proposed by the permittee, or by the staff, in response to one of the situations listed above. Verification and documentation that the permit is no longer necessary is made.
2. The staff must advise the permittee of the right to a hearing by sending the attached "Intent to

Terminate” form letter and “Termination Agreement Form” and ask that it be signed and returned.

3. If the termination agreement form is signed and returned indicating the permittee has waived the right to a hearing and certifying that there are no pending state or federal enforcement actions on the permit, the “Uncontested Termination Notification Letter” (attached) is sent to the permittee by certified mail informing him that the permit is terminated. This letter should be signed by whoever at the regional office would sign the permit if it were being issued.
4. The termination agreement form and correspondence is filed at the regional or central office as appropriate for the type of permit. Copies of VPDES and VPA permit termination agreement forms should be sent to OWPP for the Central Office file. For VPDES permits, a copy should also be provided to EPA Region III (an email notification of termination to EPA is sufficient).
5. CEDS is updated.

Attachments:

Termination documents are attached, and have been edited as follows:

- Permit references are generic so as to apply to VPDES, VPA or VWP. The appropriate permit reference should be added when the forms are used.
- The “Intent to Terminate” letter has been modified so it can be used for either a contested or uncontested termination. (The “Termination Agreement Form” is essentially unchanged.)
- The “Permit Termination Summary Form” has been edited to include a section describing pending enforcement action.
- A separate “Termination Notification Letter” for uncontested terminations has been added.

Existing Procedure for Contested Permit Terminations:

1. If the permittee does not agree to the termination, does not return the termination agreement form, or if there is a pending enforcement action on the permit, contact the permittee in writing and arrange a meeting to discuss the permittee's situation. The DEQ staff should make it clear to the permittee that the meeting is being held under the informal fact finding provisions of the Administrative Process Act, § 2.2-4019.
2. If the permittee agrees to the termination following the § 2.2-4019 hearing and there are no pending enforcement actions on the permit, obtain the signed termination agreement form and follow the procedure for uncontested permit terminations.
3. If there is a pending enforcement action, but the permittee agrees to the termination, follow the procedures below for public notice and board action. No formal hearing is required.
4. If the DEQ staff and the permittee do not reach agreement on termination and DEQ still intends to terminate the permit, a formal hearing is required before the State Water Control Board (APA § 2.2-4020 and Procedural Rule No. 1). Contact the Division of Policy and Office of Water Permit Programs for further guidance if a formal hearing is necessary.
5. If the permittee does not agree to the termination or if there is a pending state or federal enforcement action on the permit, a public notice of intent to terminate must be issued. The format of a public notice of termination is the same as the public notice for permit issuance, except that it states the Board intends to terminate the permit.

6. Board approval must be obtained after public notice when the permittee agrees to the termination but there is a pending enforcement action. The Board will terminate the permit, if it decides it is appropriate, at the board meeting. The appropriate DEQ office submits a Permit Termination Summary Form (attached) to the Division of Policy so that the permit termination is placed before the Board.
7. If a formal hearing is held before the Board, the permit termination decision will be made by the Board at the hearing.
8. If the termination is approved by the Board, the responsible DEQ office prepares the minute of the Board decision. The DEQ staff notifies the permittee by sending a copy of the minute from the Board meeting, and a transmittal letter. This notification to the permittee must be sent by certified mail and signed by whoever at the regional office would sign the permit if it were being issued.
9. Copies of termination notifications should be provided to OWPP for VPDES and VPA permits and to EPA Region III for VPDES permits (an email notification of termination to EPA is sufficient).
10. If the Board does not approve termination in any case, the permittee is so notified.
11. CEDS must be modified to reflect the facility's change in status.

Intent to Terminate Letter

Regional Letterhead

Date

Facility Contact

Facility Name

Address

RE: Termination of Permit No. _____

Dear _____ :

The Department of Environmental Quality intends to terminate the referenced permit or, if required, recommend that the State Water Control Board terminate the referenced permit for the following reason(s):

[provide an explanation]

If you agree with the proposed termination and wish to dispense with the prescribed hearing, please sign and date the attached agreement form in the spaces provided and return it to this office within 14 days.

If you do not agree with to the termination of this permit and wish a hearing under § 62.1-44.15(5) of the Code of Virginia, please contact me as soon as possible.

If you have any comments or questions, please call me at [() XXX-XXXX].

Sincerely,

[Permit Writer]

Enclosures:

Termination Agreement Form

Termination Agreement Form

SUBJECT: TERMINATION OF PERMIT NO. _____

TO: [DEQ Regional Office Address]

OWNER: [Full name as on permit
Address
City, State, Zip]

I hereby agree to the termination of Permit No. _____ and waive my right to a hearing in accordance with Section § 62.1-44.15(5) of the State Water Control Law for the following reasons:

[Provide reason for Termination]

I certify that the permit is _____ is not _____ subject to a pending state or federal enforcement action, including citizen suits, brought under state or federal law.

SIGNED: _____

PRINTED NAME: _____

TITLE: _____

DATE: _____

Permit Termination Summary Form

STATE WATER CONTROL BOARD MEETING ON (insert date)

ITEM: Name of owner **OFFICE: (insert region)**
Address

STATE WATER AFFECTED: (insert water body and river basin)

PROPOSED BOARD ACTION: Terminate (insert type of permit)

BACKGROUND: Provide the history behind the action presented; e.g., what type of facility.

DISCUSSION: Explain the basis for the termination, e g.:
owner closed;
connected to regional facility and approval of discharge no longer needed;
owner has installed a recycling or reuse system;
proposed facility will not be built;
permitted facility has no discharge and no discharge is anticipated;
covered under a general permit;
no longer any pollutant management activities at the site;
terminating a VPA Permit for a VPDES permit to allow a discharge;
compensatory mitigation successfully completed.

Include a statement that the owner has agreed to the termination of the permit.

PENDING ENFORCEMENT ACTION: Describe the state or federal enforcement action on this permit that necessitates board approval for termination and the impact of termination on this enforcement action.

PUBLIC COMMENT: Provide the status of any required public notice of the proposed termination and, if applicable, a summary of the public comment received to date.

Uncontested Termination Notification Letter

Regional DEQ Letterhead

Date

Contact Name

Facility Name

Address

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

RE: Permit No.

Dear :

The Department of Environmental Quality has approved the termination of the Permit referenced above. Termination of this permit is effective 30 days from the date of this notification unless you provide an objection in accordance with one of the two paragraphs below.

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty days from the date you received this decision within which to appeal this decision by filing a notice of appeal in accordance with the Rules of the Supreme Court of Virginia with the Director, Virginia Department of Environmental Quality.

Alternatively, any owner under §§ 62.1-44.16, 62.1-44.17 and 62.1-44.19 of the State Water Control Law aggrieved by any action of the State Water Control Board taken without a formal hearing, or by inaction of the Board, may demand in writing a formal hearing of such owner's grievance, provided a petition requesting such hearing is filed with the Board. Said agreement must meet the requirements set forth in §1.23 (b) of the Board's Procedural Rule No. 1.

If you have any questions, please call [permit writer] at () XXX-XXXX.

Sincerely,

Enclosure

cc: Department of Health (**municipal VPDES only**)

Contested Termination Notification Letter

Regional DEQ Letterhead

Date

Contact Name

Facility Name

Address

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

RE: Permit No.

Dear :

At their [date] meeting, the State Water Control Board approved the termination of the Permit referenced above. A copy of the Board meeting minute is enclosed for your information.

As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a notice of appeal in accordance with the Rules of the Supreme Court of Virginia with the Director, Virginia Department of Environmental Quality. In the event that this decision is served on you by mail, three days are added to that period.

Alternatively, any owner under §§ 62.1-44.16, 62.1-44.17 and 62.1-44.19 of the State Water Control Law aggrieved by any action of the State Water Control Board taken without a formal hearing, or by inaction of the Board, may demand in writing a formal hearing of such owner's grievance, provided a petition requesting such hearing is filed with the Board. Said agreement must meet the requirements set forth in § 1.23 (b) of the Board's Procedural Rule No. 1. In cases involving actions of the Board, such petition must be filed within thirty days after notice of such action is mailed to such owner by certified mail.

If you have any questions, please call [**permit writer**] at () XXX-XXXX.

Sincerely,

Enclosure

cc: Department of Health (**municipal VPDES only**)